

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

April 10, 2007

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In the Matter of  
City of Quincy

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Docket No. 2007-028  
File No. 59-1111  
Quincy

**RECOMMENDED FINAL DECISION**

William G. Aylward filed a Notice of Claim contesting a Superseding Order of Conditions (SOC) issued by the Department. The Claim includes a list of 23 residents of Quincy, with their signatures, and was filed “pursuant to M.G.L. c.30A, §10.”

Because the Claim did not include a copy of the appealed document, an Order for a More Definite Statement was issued requiring its submission. In addition, the petitioner’s Claim did not include a statement of appearance with signed affirmations from each member of the petitioning group authorizing Mr. Aylward, the “lead signature” to represent them.<sup>1</sup> The Order therefore required submission of a “signed affirmation by the party or each member of a ten person group, that the representative is duly authorized to represent the party in an adjudicatory appeal.” 310 CMR 1.01(2)(b).

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<sup>1</sup> The signatures of the group members were on page that did not have any other introductory information or caption identifying the subject matter or this particular case. It did include their signatures, printed names and addresses.



Mr. Aylward responded by providing a copy of the SOC appealed, but refusing to provide a statement of appearance or statements affirming his role as representative of a group of ten persons by its members, stating the “Department places an impossible burden on the Lead Signature.” He argues that he is a party, and “lead signature”, but filed the Claim “with” the other signatories and not “on their behalf”. Petitioner’s Memorandum in Opposition to Order.

Following the petitioner’s Response, the City of Quincy filed a Reply urging dismissal of the Claim. Among other arguments, the City also presented evidence that 17 of the persons listed as signatories submitted with the Notice of Claim have retracted their participation in the SOC appeal. Attached to the Reply are seventeen statements signed by seventeen of the listed signatories filed with the Claim. The statements are identical and indicate that Mr. Aylward asked them to sign a petition to preserve open space, and they were not informed that the signature would be used to appeal the SOC for the Quincy High School, and that they did not authorize their signatures to be used to appeal the Quincy High School SOC.<sup>2</sup>

The petitioners’ original filing was presented as a claim by the “undersigned residents of Quincy (‘Appellants’),” and Mr. Aylward, signed the claim. The request was filed by a group of at least 10 residents, and no other basis of standing to request the appeal was articulated.

The adjudicatory appeals regulations state that “Papers filed shall be signed and dated by the party on whose behalf the filing is made or by the party’s authorized representative and shall state the address, telephone number and facsimile number of the party or authorized representative. ... Signature by an authorized representative also certifies the full power and authority to represent the party.” By signing the Claim, Mr. Aylward presented himself as the

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<sup>2</sup> Mr. Aylward filed a Memorandum in Response to the City of Quincy’s 21 March 2007 Reply in which he states that “each signatory was told specifically about the Quincy High School project, and that each signatory had the complete Notice of Claim in front of them when they signed. He also states that none of the signatories was asked ‘to sign a petition to preserve open space’”.

authorized representative of the resident group. Further, the Claim also served as his notice of appearance under 310 CMR 1.01(2)(b).

The Order for a More Definite Statement required supplementation of the Claim with the statements from the group members acknowledging Mr. Aylward as the group's representative. The Memorandum Objecting to the Order's requirements was not responsive to the Order, and does not persuade me that each group member is acting individually and has standing under 310 CMR 10.05(7)(j) to request an adjudicatory hearing.<sup>3</sup> If that were the case, each person must have filed separately and independently met the requirements of 310 CMR 1.01(6)(b). The retractions from seventeen members leave even more doubt concerning Mr. Aylward's authority to represent the group, and more importantly, brings into question the very existence of such a group with the minimum number of ten members when the appeal was filed.

Based on the retractions now in the record, I conclude that when the appeal was filed the group did not include ten residents of Quincy. The seventeen signed "Appeal Retractions" state "I did not authorize my signature to be used [to appeal the Quincy High School project to the Department of Environmental Protection]." These seventeen persons were therefore not part of the petitioner group, leaving six persons listed in the Claim's attachment and Mr. Aylward as group members. Their number does not meet the minimum number of persons required to be a residents group with standing to request an adjudicatory hearing. See Matter of Duffy Brothers Management Co. Inc., Docket No. 98-088, Final Decision (August 9, 1999) [after eliminating non-residents and persons who withdrew their membership in the group, remaining eight residents did not have standing to appeal]; Matter of Massachusetts Water Resources Authority (Blue Hills Covered Storage Project), Docket No. 2003-166, Decision and Order on Motions to

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<sup>3</sup> Failure to comply with an Order provides independent grounds for dismissal. 310 CMR 1.01(5)(a)15.f.vi and 310 CMR 1.01(10).

Dismiss and to Amend (July 8, 2004) [group of less than 10 residents lacked standing to appeal]. The lack of sufficient resident members in the group to initiate an appeal is a jurisdictional defect that cannot be cured by adding new members at a later date. Id. I therefore recommend that this appeal be dismissed for lack of standing pursuant to 310 CMR 1.01(5)(a)15.f.v. specifically, on the basis that the ten residents group did not have the minimal number of members at the time the appeal was filed.

### **NOTICE**

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for her final decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(e), and may not be appealed to Superior Court pursuant to M.G.L. c.30A. The Commissioner's Final Decision is subject to rights and reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Final Decision or any portion of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in her sole discretion, directs otherwise.

This final document copy is being provided to you electronically by the  
Department of Environmental Protection. A signed copy of this document  
is on file at the DEP office listed on the letterhead.

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Ann Lowery  
Presiding Officer

***Adopted by Acting Commissioner Arleen O'Donnell April 12, 2007.***